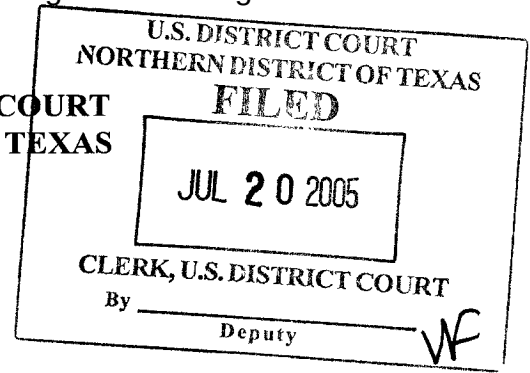


ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



SERGIO OSORIO-SANCHEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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Civil Action No. 3:01-CR-197-L (2)

ORDER

Before the court is Petitioner Sergio Osorio-Sanchez's ("Petitioner") Motion to Amend § 2255 Motion, Pursuant to Provision 4 of the AEDPA, and Title 28 U.S.C. Rule 60(b)(6),* filed August 23, 2003. Pursuant to 28 U.S.C. § 636(b), and an order of the court in implementation thereof, this action was referred to the United States magistrate judge for proposed findings and recommendation. On June 27, 2005, the Findings and Recommendation of the United States Magistrate Judge ("Report") were filed. Petitioner did not file objections to the Report.

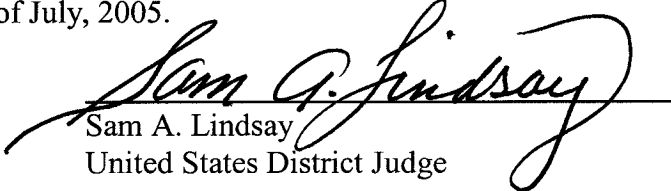
In his motion, Petitioner seeks to amend his original section 2255 motion to include a claim for ineffective assistance of counsel. The magistrate judge determined that Petitioner's motion should be construed as a motion to vacate final judgment pursuant to Fed. R. Civ. P. 60(b). Report at 1. The magistrate judge found that the circumstances alleged in Petitioner's motion do not warrant relief under Rule 60(b), and therefore recommends that Petitioner's motion be denied. *Id.* at 2.

After making an independent review of the pleadings, file and record in this case, and the findings and recommendation of the magistrate judge, the court determines that the findings of the

*The correct reference is Fed. R. Civ. P. 60(b).

magistrate judge are correct. They are therefore accepted as those of the court. Accordingly, Petitioner's Motion to Amend § 2255 Motion, Pursuant to Provision 4 of the AEDPA, and Title 28 U.S.C. Rule 60(b)(6) is **denied**.

It is so ordered this 19th day of July, 2005.


Sam A. Lindsay
United States District Judge